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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

CLAYTON GOSTOLA, *Petitioner/Appellant*,

v.

CLAUDIA CORDOVA DE FLORES, *Respondent/Appellee*.

No. 1 CA-CV 21-0171 FC
FILED 10-19-2021

Appeal from the Superior Court in Maricopa County
No. FC2012-002814
The Honorable Mark H. Brain, Judge

AFFIRMED

APPEARANCES

Clayton Gostola, Glendale
Petitioner/Appellant

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MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the court, in which Judge Brian Y. Furuya and Judge Michael J. Brown joined.

H O W E, Judge:

¶1 Clayton Gostola (“Father”) appeals the family court’s under-advisement ruling denying him relief on issues of child tax exemption, parental communication, childcare costs, and discovery. We affirm.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the court’s ruling. *Baker v. Meyer*, 237 Ariz. 112, 113 ¶ 2 (App. 2015). The unmarried parties share one child, born in 2012. DNA testing confirmed that Father was the child’s biological father. Approximately one month after the child’s birth, Father petitioned for paternity, legal decision-making,¹ parenting time, and child support. The parties initially disputed decision-making, parenting time, and parental fitness, among other issues. In December 2012, the court conducted a trial and entered a child support order that allocated the child tax exemption to Father from 2013 to 2016 and to Claudia Cordova De Flores (“Mother”) for 2017. The court initially awarded Mother sole legal decision-making and Father parenting time. He petitioned to modify visitation, legal decision-making, child support, and other parenting orders in 2014 but the petition was denied because he did not allege a “substantial change in circumstances.”

¶3 The parties also accused each other of withholding documents and violating court orders and other agreements. Father moved for an order compelling discovery in 2018. The court addressed the motion at the January 2019 status conference, ordering Mother to provide missing exhibits to Father within seven days and finding that “[a]ccording to the

¹ We refer to custody as legal decision-making throughout this decision, even though this was not the statutory term at the time of Father’s petition. See 2012 Ariz. Sess. Laws, ch. 309, § 4 (2d Reg. Sess.); A.R.S. § 25-401(3) (changing all references to “legal custody” in title 25 to “legal decision-making,” effective Jan. 1, 2013).

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parties, discovery is complete and/or they have set deadlines with which they have agreed to satisfy knowing the Court will not continue the matter for lack of disclosure.” At that status conference, the parties also reached an Arizona Rule of Family Law Procedure 69 agreement. In September 2018, Father petitioned to again modify visitation, child support, and other parenting orders, and he sought joint legal decision-making. The court conducted an evidentiary hearing in February 2019 and ordered joint legal decision-making. Mother continued as the child’s primary caretaker. The parties’ parenting time included time for the other parent to phone the child. Each phone call was limited to 15 minutes between four o’clock and the child’s bedtime.

¶4 To facilitate parental communication, the court ordered that the parties could use Our Family Wizard, a website or mobile application that parties use to communicate, if Father bought access. If he did not buy it, the parties should use email.

¶5 Furthermore, in addition to Father’s \$630 monthly child support obligation, the parties agreed that Mother would pay \$250 in monthly childcare costs and that on January 15th of each year Mother would provide childcare cost receipts to Father. Within 30 days of receipt, Father would pay his pro rata share of any amount over \$250 per month. The court also allocated the child tax exemptions between the parties and noted that Father would claim the child in 2018, Mother in 2017. Both parents, however, claimed the child tax exemption on their 2018 returns. The court also ordered the parties to execute necessary documents, such as Internal Revenue Service Form 8332, to effectuate tax exemption orders. Form 8332 allows the custodial parent to release her claim to the child tax exemption.

¶6 Father feared that the IRS would audit or sanction him for claiming the child in 2018 and asked the court to order Mother to send him Form 8332. The court did not address the tax exemption issue. In September 2019, Father petitioned to modify past child support withholding and current support obligations, arguing in part that Mother was asking for more daycare money without providing the receipts to support the amount she requested. In December 2019, the court affirmed Father’s child support payments.

¶7 That month, Father also petitioned to enforce/petitioned for contempt concerning the tax exemptions, childcare costs, and communication with Mother and the child. A few months later he moved for discovery sanctions, arguing that Mother was evasive and untimely

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responded to motions. The court conducted an evidentiary hearing in November 2020. At the hearing, Father testified that Mother still had not given him Form 8332 and that he feared that the IRS would audit him, though nothing had happened. He testified that Mother did not provide him the daycare cost receipts for 2019, and because she did not use Our Family Wizard to communicate, he resorted to emailing her. She replied to his emails via text message in violation of the court's order. Father was aware that Mother claimed that she did not have internet, and he testified that he had subpoenaed her internet records. He did not, however, request to admit the records as evidence. Father further testified that he had difficulty calling the child when she was with Mother because Mother would not answer the phone or return his calls.

¶8 Mother testified that she does not pick up calls from Father, only from the child. She also explained that she does not use Our Family Wizard because her phone cannot download applications, she does not have internet, and she cannot afford to pay for internet, which is why she responds to emails via text message. Mother also said that Father does not need Form 8332 because she consulted a tax professional who told her to claim the child in her 2018 taxes. She also testified to providing the childcare cost receipts.

¶9 The court found that Father was current in his child support payments and thus was qualified to claim the 2018 child tax exemption. Accordingly, the court found Mother in contempt for claiming the exemptions that were appropriately allocated to Father. Sanctioning Mother, however, was premature because the IRS had neither audited nor sanctioned Father. The court also found that Mother violated the order concerning Our Family Wizard but struck that provision because enforcement would be unjust.

¶10 The court also received evidence that demonstrated Father's regular contact with the child and concluded that Mother's interference "is isolated and does not evidence a pattern of willful interference." The court did not order Mother to forward him childcare cost receipts because "the principal purpose of the language quoted by [F]ather is to allow [M]other to make a documented claim for reimbursement of any excess costs," and she had never made a claim. Lastly, the court denied Father's Motion for Discovery Sanctions as moot. Father timely appealed.

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DISCUSSION

¶11 Father raises several claims on appeal. We review the family court's evidentiary rulings for an abuse of discretion. *See State v. Johnson*, 247 Ariz. 166, 199 ¶ 127 (2019). The court abuses its discretion when it "commits an error of law in the process of exercising its discretion." *Fuentes v. Fuentes*, 209 Ariz. 51, 56 ¶ 23 (App. 2004). Abuse of discretion also occurs if no evidence exists to support the court's conclusion or the court's reasons are "clearly untenable, legally incorrect, or amount to a denial of justice." *Ad Hoc Comm. of Parishioners of Our Lady of Sun Cath. Church, Inc. v. Reiss*, 223 Ariz. 505, 518 ¶ 40 (App. 2010) (quoting *Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, 350 ¶ 17 (App. 2006)).

¶12 Because the family court is in the "best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings," *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 234 ¶ 13 (App. 2011), we do not reweigh evidence on appeal, *Reeck v. Mendoza*, 232 Ariz. 299, 303 ¶ 14 (App. 2013). We presume that the court found the facts necessary to support its ruling. *Rinegar v. Rinegar*, 231 Ariz. 85, 90 ¶ 20 (App. 2012).

¶13 Father argues that the court erred because it did not order Mother to send him Form 8332. The court did not abuse its discretion in finding that sanctioning Mother for also claiming the child in 2018 would be premature. The court found her in contempt, but Father admitted that the IRS had not audited or sanctioned him.

¶14 Father also argues that the court abused its discretion because it did not enforce Our Family Wizard as the parties' primary source of communication. The court did not abuse its discretion in finding that enforcement would be unjust for Mother because of her limited internet access. Although Father argued that Mother had often used the internet, he did not seek admission of her internet records at the hearing. Because the evidence was never admitted, we cannot consider it. *See A.W. v. Ariz. Dep't of Econ. Sec.*, 247 Ariz. 249, 255 ¶ 24 n.2 (App. 2019); *see also GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4 (App. 1990) (appellate court does not consider evidence that is not part of the record before the trial court).

¶15 Father also argues that the court abused its discretion in finding that he had regular phone contact with the child. The court did not abuse its discretion because evidence of call log screenshots showed that he had regular phone contact with the child.

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¶16 Although Father argues that the court erred in not finding that he was entitled to childcare cost receipts from Mother, the court did not abuse its discretion. The court found that the purpose of the quoted language is for Mother to document any costs that exceed her monthly share. If Mother does not turn over receipts, Father is not obligated to pay that month.

¶17 Father also argues that the court did not sufficiently consider his Motion for Discovery Sanctions after denying it as moot. A “court has broad discretion in ruling on disclosure and discovery matters.” *Marquez v. Ortega*, 231 Ariz. 437, 441 ¶ 14 (App. 2013). “A question is moot when any action the court may take will have no effect on the parties to the action.” *Rohan Mgmt., Inc. v. Jantzen*, 246 Ariz. 168, 172 ¶ 9 (App. 2019) (quoting *Lord v. City of Tucson*, 10 Ariz.App. 54, 55 (App. 1969)). Further, “a court will not consider moot questions.” *Slade v. Schneider*, 212 Ariz. 176, 179 ¶ 15 (App. 2006). The court did not err in finding that the motion is moot. It addressed and resolved discovery issues at the evidentiary hearing in January 2019, finding that “[a]ccording to the parties, discovery is complete and/or they have set deadlines with which they have agreed to satisfy knowing the Court will not continue the matter for lack of disclosure.”

CONCLUSION

¶18 Because the family court did not abuse its discretion, we affirm.



AMY M. WOOD • Clerk of the Court
FILED: JT